bility might be made. When an act of revocation is clearly proved, such declarations might be admitted to show the intent of revocation. It is the modern doctrine that where intent is material, contemporaneous declarations of intent are admissible. *Commonwealth* v. *Trefethen*, 157 Mass. 180. It might then be urged that at the time when they were made, the testator intended to dispose of his property in a manner inconsistent with the will. From this it might be possible to infer that when he did the act he had the requisite intent. To support this use, analogies might be drawn from the cases where a bankrupt's subsequent statements are used to show intent in an act of bankruptcy. *Rawson* v. *Haigh*, 9 J. B. Moore, 217. But it would require strong evidence to bridge over the time between the act and the declarations, and thus make the subsequent intent material. Even then it would be somewhat of a novel extension. But in the principal case, as there is no evidence that the testator did an act of revocation nor that his intent was continuous, the decision seems clearly right.

COVENANTS AGAINST INCUMBRANCES RUNNING WITH THE LAND. — The benefit of the old common law warranty ran to the heirs or subgrantees of the original feoffee. Holmes's Common Law, 375. When conveyances came to be made by force of the statute of uses, the common law warranty, applicable only to feoffments, became obsolete and covenants of right to convey, of seisin, and against incumbrances were introduced largely to take its place. Owing to the unfortunate wording of these covenants, a literal interpretation results in their being regarded as broken the moment they are given. By such a breach, they are prevented from running with the land for the benefit of heirs or remote grantees, and thus do not serve the purpose for which they were originally intended. In actions on the covenant against incumbrances it has been definitely decided that only nominal damages may be recovered until actual damages have been suffered. Therefore, provided an immediate breach is recognized, the disastrous result follows, that not only does the covenant against incumbrances fail to run for the benefit of grantees as in the case of the other covenants, but the Statute of Limitations may run against the claim before it is possible to recover more than nominal damages. As regards this covenant, therefore, the courts have made special efforts to obviate the foregoing consequences.

In England the courts adopted the doctrine that the breach of these covenants, although immediate, is continuing, and therefore its benefit runs with the land to subsequent holders. *Kingdon* v. *Nottle*, 4 M. & S. 53. However desirable the results, this reasoning is clearly indefensible. Discussion of its soundness has, however, been set at rest by a statute providing that all such covenants shall run with the land. In America it has been held in several jurisdictions that although the covenant is broken at once, thereby becoming a mere chose in action, yet this chose in action is impliedly assigned to all subsequent grantees. *Security Bank* v. *Holmes*, 68 N. W. 113 (Minn.); *contra*, *Kenny* v. *Norton*, 10 Heisk, 384 (Tenn.). The New York Court of Appeals, dealing with the question for the first time, has recently adopted this view in a strong dictum. *Geiszler* v. *De Graaf*, 59 N. E. Rep. 993 (N. Y.). Although this implication of assignment is not unreasonable, it is obvious that the desired results are thus only partially obtained. The Statute of Limita-

tions still runs against the action; an heir can get no benefit, as the chose in action cannot be regarded as impliedly assigned to him; and the original grantee may release a covenantor who is without notice of the assignment, thus making a grantee's rights uncertain.

More satisfactory principles have been developed by most American courts which have decided the point. They have held that although there may technically be an immediate breach, no real breach exists until actual damages are suffered, so that, until such time, the statute does not run, and the covenant passes with the land, like the covenant for quiet enjoyment. *Richard* v. *Bent*, 59 Ill. 38; *Foote* v. *Corry*, 10 Ohio, 317; *Post* v. *Campan*, 42 Mich. 90. This view, which in effect regards the covenant as one purely for future indemnity, when made logically consistent by recognizing no immediate technical breach, seems clearly the best. All the desired results are thus obtained, and although the literal wording of the covenant is violated, yet in view of the facts that only indemnifying damages are allowed, that the covenant purports to be made with the covenantee, his heirs and assigns, and that its original purpose was solely to indemnify, the interpretation is readily defensible. This same doctrine ought properly to be applied to the covenants of right to convey and of seisin. Since however, in actions on these covenants, substantial damages may be recovered before they are actually sustained, the effect of an immediate breach has been less burdensome, and in consequence the decisions give less authority for holding such cases within the scope of the more liberal view.

RECENT CASES.

AGENCY — COMMERCIAL TRAVELLER — AUTHORITY TO CONTRACT. — *Held*, that in the absence of express authority to bind the principal, a commercial traveler can merely solicit and transmit orders, and the contract is not complete until the order is accepted by the principal. *John Matthews, etc., Co.* v. *Renz*, 61 S. W. Rep. 9 (Ky.).

The order solicited by the drummer has frequently been declared, as here, to be a mere offer, requiring acceptance by the principal to complete the contract. *Burbank* v. *McDuffee*, 65 Me. 135; *McKindly* v. *Dunham*, 55 Wis. 515, 518. The proper rule of law in such cases, however, is the ordinary rule of agency, that unless the act is authorized the agent cannot make a contract binding his principal; but such authorization may be either express or implied, and its extent is in each case a question for the jury. *Finch* v. *Mansfield*, 97 Mass. 89. It is doubtless generally the fact that there is no authority to bind the principal, but deciding such matters as questions of law leads to objectionable results. For example, a local custom giving agents greater authority than usual was held invalid on the ground that it was inconsistent with what had been declared to be a rule of law. *Higgins* v. *Moore*, 34 N. Y. 417. While the result reached in the principal case is doubtless satisfactory as a matter of fact, the proposition stated as a rule of law, though supported by authority, must be regarded as unsound.

BANKRUPTCY — MINING CORPORATIONS — INVOLUNTARY BANKRUPTCY. — The Bankruptcy Act of 1898, § 4 *b*, provides that "any corporation engaged principally in manufacturing, trading . . . or mercantile pursuits . . . may be adjudged an involuntary bankrupt." *Held*, that under the above section, a corporation engaged in coal-mining is not liable to involuntary bankruptcy. *In re Woodside Coal Co.*, 3 N. B. N. Rep. 336 (Dist. Ct., E. D. Pa.).

A coal-mining corporation, as lessee of mining lands, paid the owner of the lands a certain sum per ton for coal mined, and also sold supplies to its workmen. *Held*,